

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL McGORE,

Plaintiff,

v.

CASE NO. 09-13573
HONORABLE VICTORIA A. ROBERTS

OFFICER LUTZ and
OFFICER GREBOWSKI,

Defendants.

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ORDER DISMISSING COMPLAINT AND CLOSING CASE

Plaintiff Darryl McGore is a state prisoner at Oaks Correctional Facility in Manistee, Michigan. He has filed a *pro se* complaint and an application to proceed without prepayment of the fees and costs for this action. Defendants are Correctional Officers Lutz and Grebowski of the St. Louis Correctional Facility in St. Louis, Michigan. The complaint alleges that, on April 8, 2008, defendant Lutz pulled Plaintiff aside and told him to tuck in his shirt. On a subsequent occasion, defendant Lutz allegedly threatened Plaintiff with a stapler while Lutz was reviewing a grievance that Plaintiff had written about Lutz. Plaintiff seeks money damages and an order removing defendant Lutz from his block assignment.

A preliminary issue is whether Plaintiff may proceed without prepayment of the filing fee for this action. More than three of his previous complaints have been dismissed as frivolous. *See McGore v Mich. Sup. Ct. Judges*, No. 1:94-cv-517 (W.D. Mich. Jan. 25, 1995); *McGore v. Nardi, et al.*, No. 2:93-cv-137 (W.D. Mich. Aug. 2, 1993); *McGore v. Stine, et al.*, No. 2:93-cv-112 (W.D. Mich. July 26, 1993); and *McGore v. Stine, et al.*, No. 2:93-cv-77 (W.D. Mich. Apr.

30, 1993). Consequently, under the “three strikes” provision of the Prison Litigation Reform Act of 1995, Plaintiff may not proceed without prepayment of the filing fee and costs for this action unless he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g); *see also McGore v. Rich, et al.*, No. 1:09-cv-395 (W.D. Mich. May 12, 2009) (unpublished decision denying Plaintiff leave to proceed *in forma pauperis* under § 1915(g)). The fact that the four cases listed above were dismissed before the Prison Litigation Reform Act was enacted does not preclude the Court from counting the cases as “strikes” under § 1915(g). *Wilson v. Yaklich*, 148 F.3d 596, 604 (6th Cir. 1998).

Plaintiff has failed to demonstrate that he is in “imminent danger of serious physical injury,” as he is no longer confined in the same facility where the defendants work. And because he did not prepay the filing fee for this action, his complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(g).

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: October 7, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record and Darryl McGore by electronic means or U.S. Mail on October 7, 2009.

s/Carol A. Pinegar

Deputy Clerk